

Rural Housing Service, USDA

§ 3575.88

though such expenditures or loans will not be guaranteed.

§ 3575.85 Bankruptcy.

(a) *Calculating losses.* Report of Loss form (available in any Agency office) will be used for calculating estimated and final loss determinations.

(b) *Lender responsibility.* The lender is responsible for protecting the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings;

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(3) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(4) Where appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings; and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) *Appraisals.* In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary. The Agency and the lender will share the appraisal fee equally.

(d) *Liquidation expenses.* Only expenses authorized by the court of chapter 11 reorganizations, or chapters 11 or 7 liquidation (unless the liquidation is by the lender), may be deducted from the collateral proceeds.

(e) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(f) *Chapter 11 bankruptcy.* If a borrower has filed for protection under

chapter 11 of the United States Code for a reorganization (but not chapter 13) and all or a portion of the debt has been discharged, the lender may request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. If the court approves revisions to the chapter 11 reorganization plan, subsequent estimated loss payments may be requested in accordance with the court approved changes. Once the reorganization plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court ordered interest-rate reduction under the terms of the reorganization plan.

(g) *Agency approval of estimated liquidation expenses.* The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in a liquidation if the liquidation is performed by the lender. These expenses must be reasonable and customary and not include in-house expenses of the lender.

(h) *Reconciliation.* In the event that the estimated loss payment exceeds the actual loss, the lender will reimburse the Agency the amount in excess of the actual loss plus interest at the note rate from the date of the estimated loss payment.

§§ 3575.86-3575.87 [Reserved]

§ 3575.88 Transfers and assumptions.

(a) *General.* For all transfers and assumptions, the lender must concur in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account. The Agency will approve, in writing, transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan subject to the following applicable provisions:

(1) When the transaction is to a member of the borrower's organization, it will be at an amount which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference if recovery to